

**Nursing and Midwifery Council  
Fitness to Practise Committee**

**Substantive Order Review Hearing**

**22 February 2019**

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

<b>Name of registrant:</b>	Sharon Ellen Mitchell
<b>NMC PIN:</b>	99D0228E
<b>Part(s) of the register:</b>	Registered Adult Nurse – April 2002
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Ann Booth (Chair, Lay member) Shane Moody (Registrant member) Robert Cawley (Lay member)
<b>Legal Assessor:</b>	Nigel Parry
<b>Panel Secretary:</b>	Tereka Bowes
<b>Registrant:</b>	Not present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Dulcie Piff, Case Presenter
<b>Order being reviewed:</b>	Conditions of Practice Order (24 months)
<b>Outcome:</b>	Conditions of Practice Order (24 months) to come into effect at the end of 27 March 2019 in accordance with Article 30 (1)

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Mitchell was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Ms Mitchell on 24 January 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered to Ms Mitchell's registered address on 26 January 2019.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

## **Consideration of whether to Proceed in the absence of Ms Mitchell**

The panel then considered proceeding in the absence of Ms Mitchell. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Ms Piff, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Ms Piff submitted that Ms Mitchell has voluntarily absented herself from today's hearing. She drew the panel's attention to a letter from Ms Mitchell to the NMC dated 12 February 2019 in which she stated that she would be unable to attend today's hearing [PRIVATE]. Ms Piff reminded the panel that this is a mandatory review of the current order which needs to be reviewed before its expiry at the end of 27 March 2019. She stated that an adjournment is unlikely to secure Ms Mitchell's attendance and therefore the panel should proceed in her absence.

Given the contents of the letter from Ms Mitchell dated 12 February 2019 the panel was satisfied that she was aware of today's hearing. The panel determined that it was clear [PRIVATE] that it would not have been feasible for her to physically attend today's hearing. The panel determined that Ms Mitchell had not voluntarily absented herself as she had valid reasons for non-attendance. However, it did not believe that an adjournment would result in her attendance in the near future nor had she applied for a postponement for this hearing. The panel determined that it is clearly in the interest of justice and Ms Mitchell's own interests for the hearing to proceed.

### **Decision and reasons on review of the current order:**

The panel decided to extend the conditions of practice order for a period of 24 months. This order will come into effect at the end of 27 March 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 23 February 2017 for 24 months. The current order is due to expire at the end of 27 March 2019.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved which resulted in the imposition of the substantive order were as follows:

#### *Charge 1.1*

*“That you, a registered nurse, whilst working in the position of Home Manager at The Old Rectory Nursing Home (“the Home”):*

- *in respect of allegations raised by Colleague A, of serious concerns regarding the standard of care provided to one or more residents:*
  - *between approximately May 2013 and 12 June 2013, having been verbally alerted to these concerns by Colleague A, you failed to follow safeguarding procedures, or in the alternative, failed to ensure that safeguarding procedures were followed*

#### *Charge 1.2*

- *in respect of allegations raised by Colleague A, of serious concerns regarding the standard of care provided to one or more residents:*
  - *Having received or been made aware of a letter from Colleague A dated 12 June 2013, in respect of the allegations, failed to follow safeguarding procedures, or in the alternative, failed to ensure that safeguarding procedures were followed*

### *Charge 1.3*

- *in respect of allegations raised by Colleague A, of serious concerns regarding the standard of care provided to one or more residents:*
  - *Failed to promptly investigate the allegations, or in the alternative, failed to ensure an investigation took place promptly.”*

The original panel determined the following with regard to impairment:

“The panel was particularly concerned that, beyond acknowledging that she ought to have taken steps to ensure that Mr 4 initiated and followed safeguarding procedures following receipt of Colleague A’s letter dated 12 June 2013, she has demonstrated little insight. Ms Mitchell has not acknowledged that she ought to have initiated and followed safeguarding procedures and promptly investigated the concerns when she was initially made aware of them by Colleague A verbally. The panel considered that Ms Mitchell has not demonstrated insight into why her actions in this regard were wrong, and she has shown no recognition of the potential harm to which she placed vulnerable residents and the importance of following safeguarding procedures. Further, she has failed to acknowledge the wider implications of her actions, namely the impact her failures may have on the reputation of the nursing profession. The panel was of the view that Ms Mitchell has demonstrated little remorse and limited insight into her shortcomings.

The panel considered whether Ms Mitchell’s misconduct is remediable, whether it has been remedied and whether it is likely to be repeated. The panel considered that the misconduct is capable of being remedied. The panel took account of a reference dated 23 November 2015 from her employer, but it had regard to the fact that this reference is dated some 15 months ago, and therefore the panel has no up-to-date information in relation to Ms Mitchell’s current practice or any remedial steps taken.

The panel concluded that as Ms Mitchell has demonstrated limited insight, there is a risk of repetition of her misconduct, and therefore that she remains liable in the future to act in such a way as to put patients at unwarranted risk of harm,

bring the nursing profession into disrepute and breach fundamental tenets of the profession.

The panel further considered whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment of fitness to practise was not made. The panel was satisfied that the seriousness of the misconduct in this case and the risk of harm it posed to residents, meant that a finding of current impairment is required in order to declare and uphold proper professional standards and maintain public confidence in the profession. The panel was satisfied that public confidence in the profession would be undermined if no finding of impairment were made.

For all the reasons outlined above, the panel determined that Ms Mitchell's fitness to practise is currently impaired by reason of her misconduct."

The original panel determined the following with regard to sanction:

"The panel determined that it would be possible to formulate appropriate and practical conditions, as set out in paragraph 64 of the ISG, which would address the failings highlighted in this case. The panel noted the employer reference from Whitecliffe House dated 23 November 2015 which stated that Ms Mitchell had undertaken and completed some training in Safeguarding of Vulnerable Adults procedures. There being no other evidence to contradict this, the panel concluded that Ms Mitchell would be willing to comply with a conditions of practice order.

The panel took into account that the failings identified in this case could have had serious consequences for the vulnerable residents under Ms Mitchell's care. The panel took into account that whilst there was no evidence of actual harm to residents, there was the potential for harm to be caused. The panel was of the view that failing to follow safeguarding procedures promptly not only places vulnerable members of the public at risk but also damages the reputation of the nursing profession.

However, the panel had regard to the fact that Ms Mitchell demonstrated developing insight into her failings during the NMC process and it took account of the fact that prior to these incidents and following these incidents, there have been no concerns in relation to her practice. The panel had regard to a reference dated 23 November 2015 from Ms Mitchell's previous employer at Whitecliffe House and noted that Ms Mitchell was in a leadership role and was described by the Home Manager as "a strong leader, innovative, an experienced and knowledgeable nurse willing to admit failings and proactive in rectifying any gaps in her knowledge." However, the panel took into account that this reference is dated some 15 months ago and therefore does not give an accurate reflection of her current practice. The panel took into account that it has not received up-to-date information from Ms Mitchell as to her current employment.

The panel had regard to the public interest in this case, and noted that whilst it includes upholding the proper standards of conduct and performance expected of a registered nurse, it also means assisting an otherwise clinically competent nurse, with no other concerns, the opportunity to remedy her failings and demonstrate to a reviewing panel, that she has learnt from her past misconduct. The panel was of the view that it was in the public interest that, with appropriate safeguards, Ms Mitchell should be able to return to practice as a nurse.

Balancing all of these factors and after having taken into account both the aggravating and mitigating features of this case, the panel concluded that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking off order would be disproportionate and would not be a reasonable response in the circumstances of Ms Mitchell's case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public

confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

1. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:

Working at all times on the same shift as, but not necessarily under the direct supervision of another registered nurse, who is physically present in or on the same unit or home that you are working in.

2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:
  - a. Safeguarding of vulnerable adults; and
  - b. Undertaking investigations.
3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every 4 weeks to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.
4. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.

5. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.
6. You must disclose a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.
7. You must produce a reflective account addressing how your behaviour had the potential to cause
  - a. Unwarranted harm to residents; and
  - b. Damage to the reputation of the nursing profession.
8. You must tell the NMC within 14 days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
9. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.
10. a) You must within 14 days of accepting any employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the

individual or organisation offering the post, employment or course of study.

b) You must within 14 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

11. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (10) above, to them

- a. Any organisation or person employing, contracting with or using you to undertake nursing or midwifery work;
- b. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing or midwifery services;
- c. Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment; and
- d. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).

The period of this order is for 2 years.”

### **Decision on current fitness to practise**

The panel has considered carefully whether Ms Mitchell's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review

of the order in light of the current circumstances. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it, including the NMC bundle and an on-table document [PRIVATE]. It has taken account of the submissions made by Ms Piff on behalf of the NMC.

Ms Piff outlined the findings of the original substantive panel's decision on fact, impairment and sanction. She submitted that since the hearing there has not been a material change in the circumstances of Ms Mitchell's case. Ms Piff informed the panel that Ms Mitchell has not worked as a registered nurse since the imposition of the conditions of practice order [PRIVATE]. As a result she has been unable to comply with such conditions. Ms Piff reminded the panel that patients previously in Ms Mitchell's care were at a risk of harm as she had breached professional standards and there were concerns regarding the quality of care that she provided. She submitted that it is a matter for the panel's independent judgement whether Ms Mitchell remains impaired.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Ms Mitchell's fitness to practise remains impaired.

The panel took into account that Ms Mitchell has been unable to comply with the conditions of practice imposed, as she has not worked as a registered nurse since the substantive hearing. The panel carefully considered the contents of the letter dated 12 February 2019 from Ms Mitchell which stated:

"I am aware of the condition of practice order for 2 years, [PRIVATE]"

The panel also noted in that letter Ms Mitchell's desire to return to practice as a registered nurse. However, given the fact that she has been unable to comply with the conditions, the panel determined that there is a continuing risk of harm to patients. The panel was of the view that Ms Mitchell's actions had the potential to place vulnerable residents at an unwarranted risk of harm and there is a risk that her conduct may be repeated in the future.

The panel considered whether Ms Mitchell has remediated her misconduct. The panel bore in mind that [PRIVATE] she has had limited opportunities to address the concerns raised by the previous panel.

The panel bore in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing professions and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on both public interest and public protection grounds is required.

The panel considered whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances of this case. The panel has determined that members of the public would be concerned if Ms Mitchell was able to practice unrestricted given her misconduct. The panel considered that she has brought the profession into disrepute and nurses occupy a position of trust and are expected at all times to maintain the standards expected of them and to uphold the reputation of their profession.

The panel considered that Ms Mitchell remains impaired on public protection grounds given the potential risk of harm that had been posed to vulnerable service users and the risk that such conduct may be repeated in the future.

For these reasons, the panel finds that Ms Mitchell's fitness to practise remains impaired.

## **Determination on sanction**

Having found Ms Mitchell's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the NMC's Sanctions Guidance (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered the imposition of a conditions of practice order. The panel was of the view that a conditions of practice order continues to be sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence, no deep seated attitudinal problems, that the misconduct related to poor judgment rather than clinical competence, and that conditions could be formulated which would protect patients during the period they are in force.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to continue a conditions of practice order for a period of 24 months, which will come into effect on the expiry of the current order. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

1. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line

manager, mentor or supervisor nominated by your employer, such supervision to consist of:

Working at all times on the same shift as, but not necessarily under the direct supervision of another registered nurse, who is physically present in or on the same unit or home that you are working in.

2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:
  - a. Safeguarding of vulnerable adults; and
  - b. Undertaking investigations.
3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every 4 weeks to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.
4. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.
5. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.
6. You must disclose a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your

personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.

7. You must produce a reflective account addressing how your behaviour had the potential to cause
  - a. Unwarranted harm to residents; and
  - b. Damage to the reputation of the nursing profession.
  
8. You must tell the NMC within 14 days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
  
9. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.
  
10. a) You must within 14 days of accepting any employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.  
  
b) You must within 14 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.
  
11. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (10) above, to them
  - a. Any organisation or person employing, contracting with or using you to undertake nursing or midwifery work;

- b. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing or midwifery services;
- c. Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment; and
- d. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).

The period of this order is for 2 years.

The panel determined that a suspension order would be wholly disproportionate [PRIVATE]. The panel noted her stated intention that she wished to return to work as registered nurse. That she felt that she still had a lot to offer and she has continued to engage with the NMC.

In accordance with Article 30 (1) of Nursing and Midwifery Order 2001 the conditions of practice order will come into effect at the end of 27 March 2019.

This decision will be confirmed to Ms Mitchell in writing.

That concludes this determination.